STATE OF MICHIGAN

COURT OF APPEALS

KENNETH J. SPEICHER,

Plaintiff-Appellant,

v

COLUMBIA TOWNSHIP BOARD OF ELECTION COMMISSIONERS, DANIELLE NUISMER, LARRY BURGETT, and STACEY CORKE,

Defendants-Appellees.

UNPUBLISHED
April 29, 2014

No. 312209
Van Buren Circuit Court
LC No. 12-610702-CZ

Before: SHAPIRO, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

In this Open Meetings Act (OMA) case, MCL 15.261 *et seq.*, plaintiff appeals by right the trial court order that granted summary disposition in favor of defendants and denied his motion for summary disposition. For the reasons set forth below, we affirm in part and reverse in part.

On October 15, 2011, defendant Columbia Township Board of Election Commissioners (the Board) scheduled a meeting to appoint election inspectors for the November 2011 election. At the time, defendants Danielle Nuismer, Larry Burgett, and Stacey Corke were serving as election commissioners. Before the meeting began, plaintiff and Dixie Kovach submitted applications to be considered as election inspectors. The individual defendants did not consider these applications at the meeting and voted to appoint three other individuals whose applications had been signed in 2010. Plaintiff and Kovach were informed by Nuismer and Corke that they were not qualified to serve as election inspectors because they had not received the required training. When so advised, plaintiff told the Board that the applicable law permitted citizens to be trained as election inspectors after they were appointed and required election inspector applications to be signed during the current calendar year. Given this explanation, defendants then voted to rescind their previous vote and rescheduled the meeting for a later date. At a January 31, 2012 meeting, the Board approved the October 15, 2011 meeting minutes. Those

minutes failed to include reference to the two roll call votes, i.e., the vote appointing the inspectors and the votes that rescinded that vote.[1]

On October 18, 2011, the Board held its next meeting, again for the purpose of appointing November 2011 election inspectors. The individual defendants again did not consider plaintiff and Kovach's applications and voted to appoint three individuals, two of whom had been appointed (and had their appointments rescinded) at the October 15, 2011 meeting. Plaintiff and Kovach were informed that their applications had not been considered because the township clerk would be unable to "certify" them as qualified election inspectors before the November 2011 election. It was undisputed below that the three individuals whom defendants appointed had submitted applications that were signed in 2011. The meeting was adjourned without defendants considering or approving the October 15, 2011 minutes.

On January 4, 2012, plaintiff filed a five-count complaint alleging that defendants violated multiple provisions of the OMA during the October 15th and October 18, 2011 meetings. After the parties filed competing motions for summary disposition, the trial court granted summary disposition in favor of defendants on all of plaintiff's claims under MCR 2.116(C)(10).

"This Court reviews a trial court's order on a motion for summary disposition de novo." *Bennett v Detroit Police Chief*, 274 Mich App 307, 316; 732 NW2d 164 (2006). A motion for summary disposition pursuant to MCR 2.116(C)(10) is reviewed "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Bennett*, 274 Mich App at 317.

Plaintiff first argues that the trial court erred by granting summary disposition in favor defendants on his claimed violations of MCL 15.263(2) ("[a]ll decisions of a public body shall be made at a meeting open to the public") and MCL 15.263(3) ("[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public"). Plaintiff argues that there was a material question of fact as to whether Nuismer and Corke "deliberated" inside of Corke's office before the October 15, 2011 meeting was held and "decided" to exclude plaintiff and Kovach from consideration as election inspectors.

"[D]eliberating" is defined as "the act of carefully considering issues and options before making a decision or taking some action; esp., the process by which a jury reaches a verdict; as by analyzing, discussing, and weighing the evidence." *Ryant v Cleveland Twp*, 239 Mich App 430, 434; 608 NW2d 101 (2000) (emphasis excluded). It was undisputed below that, at the time of the October 15, 2011 meeting, plaintiff and Kovach had not attended training school or taken the examination that is required to be appointed an election inspector. See MCL 168.677(3). Because neither plaintiff nor Kovach was qualified to serve as an election inspector at the time of

[1] Plaintiff also alleges that, at the October 15, 2011 meeting, the Board failed to address or approve the minutes from its previous meeting, held April 20, 2011.

the October 15th meeting, there were no "options" to be "carefully" considered by defendants. Thus, any conversation that took place between Nuismer and Corke regarding plaintiff's and Kovach's qualifications did not constitute deliberations within the meaning of the OMA. While plaintiff argues that, pursuant to MCL 168.683, he was permitted to complete training after he was appointed to serve as an election inspector, there is no evidence on the record to support a conclusion that Nuismer and Corke were aware of the statute and still decided to eliminate plaintiff and Kovach from consideration. Thus, plaintiff failed to present evidence sufficient to establish a question of material fact as to whether Nuismer and Corke "deliberated" in Corke's office on October 15, 2011.

Plaintiff also argues that defendants "decided" whom to appoint as election inspectors outside of a public meeting. It was undisputed below that Corke moved to appoint three individuals at the beginning of the October 15, 2011 meeting and that the motion was immediately approved by Nuismer and Burgett without any discussion. Because defendants were required to appoint "at least 3 election inspectors," MCL 168.674(1), and there is no evidence on the record that more than three qualified individuals submitted applications before the October 15, 2011 meeting, plaintiff's claim that deliberation and decision-making occurred before the October 15, 2011 meeting took place is purely based on speculation. Speculation, conjecture, and assumptions are not sufficient to overcome a motion for summary disposition. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

Accordingly, because plaintiff failed to present evidence sufficient to establish a question of material fact existed regarding whether defendants engaged in "deliberations" or made "decisions" outside of a public meeting, the trial court did not err by granting summary disposition in favor of defendants on plaintiff's claims that defendants violated MCL 15.263(2) and (3) in relation to the October 15, 2011 meeting.

Plaintiff asserts similar claims regarding the October 18, 2011 meeting, i.e., that defendants "deliberated" and made "decisions" regarding the election inspectors outside of a public meeting. Again, plaintiff relies on mere speculation to support his allegations that defendants deliberated in the presence of the public in "whispered discussions" before the meeting was called to order. *Karbel*, 247 Mich App at 97. Further, upon reviewing the video recording of the October 18, 2011 meeting, we find that a reasonable factfinder could not conclude that defendants were deliberating and determining whom to appoint before the meeting was called to order. Moreover, it was undisputed below that, at the time of the October 18, 2011 meeting, the parties were aware that plaintiff and Kovach were unable to become qualified to serve as election inspectors before the November 2011 election. Thus, for the reasons discussed above, any conversation between defendants regarding plaintiff's and Kovach's lack of qualifications did not constitute deliberations under the OMA. Because plaintiff failed to present evidence sufficient to establish a question of material fact regarding whether defendants "deliberated" or made "decisions," we find that the trial court did not err by granting summary

disposition in favor of defendants on plaintiff's claim that defendants violated MCL 15.263(2) and (3) in relation to the October 18, 2011 meeting.[2]

Plaintiff next alleges that the Board violated MCL 15.269 by failing to include the two roll call votes that took place at the October 15, 2011 meeting in the minutes. Plaintiff also alleges that the Board violated MCL 15.269 by failing to approve the October 15th meeting minutes at the October 18, 2011 meeting.[3] Below, both parties moved for summary disposition on these claims, arguing that the undisputed evidence established that they were entitled to judgment as a matter of law.

The trial court granted summary disposition in favor of the Board after finding that any technical violations of the OMA did not entitle plaintiff to relief because the undisputed evidence established that the Board substantially complied with the OMA. Contrary to the court's ruling, the OMA only recognizes the defense of substantial compliance where a party seeks invalidation of a public body's decision. MCL 15.270(2). Because the record is clear that plaintiff did not request invalidation of the Board's actions, we find that the trial court erred by granting summary disposition in favor of the Board on the basis of substantial compliance.

Despite the trial court's erroneous application of the substantial compliance doctrine, we will generally affirm a lower court's ruling if it reaches the right result, albeit for the wrong reason. *Miller-Davis Co v Ahrens Constr, Inc* (*On Remand*), 296 Mich App 56, 70; 817 NW2d 609 (2012). Accordingly, we must address the merits of plaintiff's claims.

First, plaintiff alleges that the Board violated MCL 15.269 by failing to include the two roll call votes that took place at the October 15, 2011 meeting in the minutes. MCL 15.269(1) provides that meeting minutes "shall include all roll call votes taken at the meeting." It is a well-established rule of statutory interpretation that the word "shall" designates a mandatory provision. See *Port Huron v Amoco Oil, Inc*, 229 Mich App 616, 631; 583 NW2d 215 (1998). In its answer to plaintiff's complaint, the Board admitted that the two roll call votes were absent from the minutes for the October 15, 2011 meeting. The October 15, 2011 minutes were approved at a January 31, 2012 meeting of the Board. The record provided to this Court shows no indication that the roll call votes were ever added to the minutes. Moreover, MCL 15.269(1) requires that any corrections to the minutes must be made at the subsequent meeting of the public body, in this case, the October 18, 2011 meeting. The record does not indicate that the necessary

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[2] Plaintiff's allegations of "deliberating" and "decision-making" conducted violation of the OMA were levied against the Board, as a public body. Plaintiff also sued the individual defendants, asserting that they intentionally violated the OMA by engaging in the alleged deliberating and decision-making. See MCL 15.273. As discussed, plaintiff failed to present sufficient evidence to establish a genuine issue of material fact as to whether the Board deliberated or made decisions in violation of the OMA. Accordingly, the trial court did not err by granting summary disposition in favor of the individual defendants.

[3] Plaintiff's complaint does not allege these claims of OMA violations against the individual defendants.

correction was made at that meeting. Therefore, the Board violated the OMA by failing to include the two roll call votes in the October 15, 2011 meeting minutes. MCL 15.269(1).

The Board argues that because the first roll call vote was rescinded by the second roll call vote, the votes never actually occurred and, therefore, were not required to be reflected in the minutes. This argument is without merit. Unambiguous statutes are interpreted according to their plain meaning, see *Meier v Awaad*, 299 Mich App 655, 672-673; 832 NW2d 251 (2013), and MCL 15.269(1) requires that a public body's meeting minutes include "*all* roll call votes taken at the meeting." (Emphasis added). The statute provides no exception for roll call votes that were rescinded. The Board's reliance on *Willis v Deerfield Twp*, 257 Mich App 541, 553; 669 NW2d 279 (2003) and *Manning v East Tawas*, 234 Mich App 244, 251-252; 593 NW2d 649 (1999) is unpersuasive because those cases involved a request for invalidation of a public body's action, not merely injunctive or declaratory relief, as the instant plaintiff sought. As discussed above, requests for invalidation implicate the application of the substantial compliance doctrine, MCL 15.270(2), unlike requests for injunctive or declaratory relief, which merely require a showing that a public body violated the OMA.

Accordingly, we find that the Board violated the OMA by failing to record the two roll call votes in the approved minutes for October 15, 2011 meeting. The trial court erred by granting summary disposition in favor of the Board on that claim and further erred by denying plaintiff's motion for summary disposition on that claim.

Second, plaintiff alleges that the Board violated MCL 15.269 by failing to approve the April 20, 2011 meeting minutes at the October 15, 2011 meeting and by failing to approve the October 15th meeting minutes at the October 18, 2011 meeting. MCL 15.269 provides in relevant part:

> (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.
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> (3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.

Contrary to plaintiff's assertion, the OMA does not provide for *when* meeting minutes must be approved. Plaintiff does not allege that the Board failed to make the proposed or

approved minutes available within the time frames dictated by MCL 15.269(3). Accordingly, plaintiff cannot establish that the Board violated the OMA by failing to approve the April 20, 2011 meeting minutes at the October 15, 2011 meeting or by failing to approve the October 15th meeting minutes at the October 18, 2011 meeting and the trial court did not err by granting summary disposition on that claim.[4]

We therefore affirm the trial court's grant of summary disposition in favor of defendants on all of plaintiff's claims except that concerning the Board's failure to record the roll call votes in the minutes of the October 15, 2011 meeting. As to this claim only, we reverse the trial court's grant of summary disposition in favor of the Board and remand for entry of an order granting summary disposition in favor of plaintiff, as well as for other proceedings not inconsistent with this opinion.

Affirmed in part, reversed in part, and remanded for proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens

[4] Plaintiff appears to rely on the provision of MCL 15.269(1) that provides, "The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer." However, that provision does not provide *when* minutes must be approved. Further, there is no evidence in the record provided to this Court that corrections were ever made to the minutes at issue, and, thus, this portion of MCL 15.269(1) is irrelevant to this particular claim.